

**Before the Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:

Advanced Television Services and
Their Impact upon the Existing
Television Broadcast Service

)
)
)
)
)

MB Docket No. 87-268

Directed to: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

The Board of Trustees of The University of Alabama ("University"), licensee of Television Station WUOA(TV), Channel 23, Tuscaloosa, Alabama, by its attorneys, hereby respectfully submits its Opposition to the Petition for reconsideration filed by Mullaney Engineering, Inc. ("Mullaney") on October 26, 2007, with regard to the Commission's *Seventh Report and Order and Eighth Further Notice of Proposed Rule Making*, FCC 07-138, released August 6, 2007 ("*Seventh R&O and Eighth Further Notice*"). Specifically, University opposes Mullaney's suggestion that Channels 5 and/or 6 should be reallocated for some type of FM radio use at this juncture in the DTV transition. With respect thereto, the following is stated:

1. WUOA is currently licensed to operate on analog Channel 23, and, as previously noted, it has no assigned companion digital channel. In response to the Commission's *Seventh Further Notice of Proposed Rule Making*, FCC 06-150, released October 20, 2006 ("*SFNPRM*"), University submitted "Comments" and a "Supplement to Comments" on June 1, 2007. In its "Supplement to Comments," University demonstrated that the allotment of Channel 4 or Channel 6 as WUOA's post-transition DTV channel rather than the currently allotted Channel 23 would serve the public interest. In the *Eighth Further Notice*, in response to University's request, the Commission proposed replication facilities on Channel 6 as WUOA's post-transition digital

channel. On October 10, 2007, University filed "Comments" in this proceeding in which it reiterated its support for the proposed change to Channel 6.

2. Now, as the Commission and television stations throughout the nation are in the middle of finalizing plans for the actual transition to all-DTV operation, Mullaney has filed a petition for reconsideration which seeks to alter one of the fundamental bases on which the transition is proceeding, namely, the spectrum of channels available for DTV use. As an initial matter, it must be noted that Mullaney's petition is procedurally unacceptable in the current context. While it is styled as a "Petition for Reconsideration" of the *Seventh R&O and Eighth Further Notice*, its scope is beyond any matters decided or discussed in that document. While there is an oblique relationship between the Mullaney petition and the proposal of the *Eighth Further Notice* to allot Channel 6 for use by WUOA, Mullaney does not specifically discuss this matter, nor did it file comments in response to the *Eighth Further Notice*. Any proposal of this type would have to be advanced in a new proceeding and cannot be considered as a matter of reconsideration of the *Seventh R&O and Eighth Further Notice*.

3. Furthermore, Mullaney's petition is untimely. The issue of which channels should be included in the group of "core" channels available for DTV use, and specifically the question of the inclusion of Channel 2 through 6 in the core, was decided nearly ten years ago. *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24, released February 23, 1998, at ¶33. Additionally, that decision was already subject to reconsideration some nine years ago, and the Commission reaffirmed its conclusion that Channel 6 should not be reallocated for radio use. *Second Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-315, released December 18, 1998, at

¶¶54-57. At that time, the Commission specifically considered the reallocation of Channel 6 for radio use but determined that it was important to maintain Channel 6 for television use, as the need for the channel for television use outweighs the potential for improvement for noncommercial educational radio stations. *Id.* Thus, the filing is seeking reconsideration of matters settled some nine years ago in a different part of the proceeding and seeking to alter a basic determination underlying the transition which was made approximately midway through the proceeding. Accordingly, Mullaney's petition must be dismissed as procedurally defective.

4. Further, the practical considerations which would flow from Mullaney's proposals argue against their adoption. As this juncture, with full-power television stations scrambling to complete transition to DTV-only operation by the rapidly approaching, hard deadline of February 17, 2009, and with Class A television, LPTV, and TV translators also seeking to make that transition down the line, a new proposal now would create additional confusion for those users as to available channels.

5. Additionally, provisions for the protection of authorized Channel 6 facilities would need to be made. That protection would need to include a significant allowance for maximization of the post-transition DTV facilities. Both analog and DTV station licensees and permittees have been precluded by the Commission's filing freeze from seeking modifications that would expand or move their station's coverage areas outside of current parameters. In the meantime since that freeze was put in place, however, stations have settled on their final, post-transition channels, more experience has been gained with DTV operations in the real world, and other circumstances have changed. The public interest therefore demands that stations authorized for post-transition Channel 6 operation be afforded flexibility to modify and expand

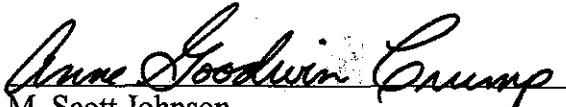
their post-transition facilities in order to maximize their service to the public.

6. Furthermore, the reallocation of the spectrum for radio use would require modifications of all radio receivers, including car radios, to allow listeners to receive the new stations or services offered in that band. While there are some specialized radio receivers that allow reception of audio from the television band, most radio receivers of today and virtually all car radios are limited to the current FM band and would not allow reception of new stations within the Channel 6 spectrum. Clearly, making this change would impose financial costs of some magnitude on the consumer. The public interest costs and benefits of making such a change, especially following hard on the heels of the DTV transition and the introduction of digital radio, are matters which must be weighed carefully. These also are matters which have nothing to do with transition to DTV operation. Moreover, such a change in spectrum allocation is not a matter that could be accomplished without an opportunity for public comment. It is therefore readily apparent that the proposals made by Mullaney are not appropriate for consideration in the context of a petition for reconsideration in the instant rule making proceeding, but rather any consideration would require a separate proceeding.

7. Thus, taking these factors into consideration, Mullaney's petition is untimely and procedurally unacceptable. Although it is styled as a petition for reconsideration of the *Seventh R&O and Eighth Further Notice*, it in fact seeks to go back and obtain reconsideration of settled decisions made nearly a decade ago and matters not included in the *Seventh R&O and Eighth Further Notice*. While as outlined above, the proposals made are not appropriate for consideration in the context of a petition for reconsideration in the instant proceeding, if Mullaney wishes to pursue this matter, it may file a petition for rule making.

WHEREFORE, the premises considered, University respectfully requests that Mullaney's petition be dismissed as untimely and procedurally inappropriate.

Respectfully submitted,
THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ALABAMA

By: 
M. Scott Johnson
Anne Goodwin Crump

Its Attorneys


FLETCHER, HEALD & HILDRETH, P.L.C.
1300 N. 17th Street
Eleventh Floor
Arlington, Virginia 22209
(703)812-0400

December 3, 2007

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that a true copy of the foregoing Opposition to Petition for Reconsideration was served by first class mail, postage prepaid, this 3rd day of December, 2007, to the following:

John J. Mullaney
Mullaney Engineering, Inc.
9049 Shady Grove Court
Gaithersburg, MD 20877



Deborah N. Lunt